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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,612	11/19/2003	Brian Flannery	FLANNERY-001	4846

34111 7590 10/11/2006

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EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT	PAPER NUMBER
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3782

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/715,612	FLANNERY, BRIAN	
	Examiner	Art Unit	
	Justin M. Larson	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/19/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "52" has been used to designate both a second thumbscrew and a first retaining ring. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 8, 9, 11, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said support member" in line 5. There is insufficient antecedent basis for this limitation in the claim. Claim 1 also recites the limitation "said

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support" in line 9. Since two supports have been set forth, a support arm and a support platform, it is unclear which support "said support" refers to.

Claims 8 and 9 recite that the first and second ends of the support arm are orthogonal to the support arm. The ends of the support arm cannot be orthogonal to the support arm as they are in fact a part of the support arm. Basically, the support arm cannot be orthogonal to itself. More structure of the support arm needs to be set forth in order to establish this orthogonal relationship between various parts of the support arm.

Claim 11 recites the limitation "the four grill mounting flanges" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the length of the grill" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kincart (US 5,806,736 A).

Regarding claims 1 and 2, Kincart discloses a mounting apparatus (Figure 1B) comprising a support arm (50) having a first end and a second end, a support platform (56, Figure 3) having a top and bottom surface attached to the second end of said support arm, a pivot mount assembly (80) mounted on the bumper of a vehicle; the first end of said support member attached to said pivot mount assembly and is pivotal about said pivot mount assembly, and a retaining mount assembly (42) mounted to the bumper at a spaced distance from said pivot mount assembly, said retaining mount assembly adapted to removably receive said support arm and to retain said support from arm pivoting about said pivot mount assembly.

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Kincart which is capable of being used in the intended manner, i.e., to support a grill on the support platform. There is no structure in Kincart that would prohibit such functional intended use (see MPEP 2111).

Regarding claims 8 and 9, the support arm of Kincart has a bent first end.

6. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by LeDuc et al. (US 6,701,913 B1).

LeDuc et al. disclose a grill mounting apparatus (Figure 3) comprising a support arm (340) having a first end and a second end, a support platform (390) attached to the second end of said support arm, a pivot mount assembly (350), the first end of said support member attached to said pivot mount assembly and is pivotal about said pivot mount assembly, and a retaining mount assembly (434), said retaining mount assembly

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adapted to removably receive said support arm and to retain said support from arm pivoting about said pivot mount assembly.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-6, 8-17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (US 6,354,286) in view of LeDuc et al. and Kincart.

Regarding claim 2, Davis discloses a grill mounting apparatus (Figure 7) comprising a support arm (22) having a first end and a second end, a support platform (25) having a top and bottom surface attached to the second end of said support arm, a pivot mount assembly (35) mounted on the bumper of a vehicle, the first end of said support member attached to said pivot mount assembly and is pivotal about said pivot mount assembly, but fails to disclose a retaining mount assembly mounted to the bumper at a spaced distance from said pivot mount assembly, said retaining mount assembly adapted to removably receive said support arm and to retain said support arm from pivoting about said pivot mount assembly.

Looking at the design of Davis, the support arm extends well above the height of a vehicle bumper and a retaining member mounted on the bumper would therefore not receive the support arm when the support arm was pivoted into close relation to the vehicle. Looking at LeDuc et al., however, it is clearly known in the art to have a support

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arm extend parallel with a vehicle bumper, effectively mounting the grill in a lower position. Furthermore, Examiner takes the position that changing the angle at which the support arm of Davis extends would be an obvious matter of design choice. For both of these reasons, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the support arm of Davis by having it extend at a much lower angle such as parallel to the vehicle's bumper, as taught by LeDuc et al., in order to support the grill at a lower location, perhaps to allow less restricted access to the vehicle trunk.

Regarding the retaining member, LeDuc et al. and Kincart both teach that it is known in the art to include a retaining member in a pivoted mount apparatus in order to secure the support arm of the mount apparatus against the vehicle bumper in a locked position, free from pivotal movement. Kincart specifically teaches that such a retaining member can be mounted directly to a vehicle's bumper at a spaced distance from the pivot mount assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a retaining member in the modified Davis grill mount apparatus, as taught by both LeDuc et al. and Kincart, in order to provide a means for securing the support arm against the vehicle bumper when the vehicle was in motion.

Regarding claim 3, the platform of the Davis grill mounting apparatus includes the claimed features except for two mounting flanges. LeDuc et al., however, teaches a grill mounting platform that has two mounting flanges (404,408) on its topside to which the grill is secured via fasteners (418). It would have been obvious to one having

ordinary skill in the art at the time the invention was made to replace the platform of Davis with another known grill mounting platform, such as taught by LeDuc et al., since both are art-equivalent grill supports.

Regarding claim 4, LeDuc et al. teaches that the platform may have a collar mounted on its bottom side to allow the platform to pivot or rotate (col. 7 line 66 – col. 8 line 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize such a collar when replacing the platform of Davis with that of LeDuc et al., so that the platform would be capable of rotating about the support arm, thus allowing a user to adjust the orientation of the grill to their liking.

Regarding claims 5 and 15, the pivot assembly of the modified Davis mounting apparatus comprises a first clamping means (36/37) for mounting said pivot mount assembly to the bumper and a pivot collar (22) attached to said clamping means for receiving the first end of the support arm.

Regarding claims 6 and 17, the modified Davis mounting apparatus includes a retaining member as taught by LeDuc et al. and Kincart, however, LeDuc et al. and Kincart do not teach a clamping means for securing the retaining member to the bumper. The retaining member of LeDuc et al. is not on a bumper at all and the retaining member of Kincart is permanently attached to the bumper. When attaching the retaining member of the modified Davis mounting apparatus to the bumper, as taught by Kincart, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a clamping means like that securing the pivot assembly of the modified Davis mounting apparatus to the bumper, rather than permanently

attaching the retaining member to the bumper, as taught by Kincart, so that a user could completely remove the grill mounting apparatus from the vehicle when not in use. The clamping means taught by Davis could be used to removably secure any number of mounting devices or other structures to a vehicle bumper.

Regarding claims 8, 9, and 14, the support arm of the modified Davis mounting apparatus, after being formed parallel to the bumper, would effectively have to bent ends orthogonal to the central portion of the support arm between the ends.

Regarding claims 10 and 13, the modified Davis mounting apparatus as set forth above includes the claimed features.

Regarding claim 11, the platform of the modified Davis mounting apparatus includes two mounting flanges (404,408), each having two fasteners for securing a grill to the platform. Both the platform of the modified Davis mounting apparatus and that of Applicant's present invention include a total of four fasteners. Examiner is of the position that it would have been obvious to one having ordinary skill in the art at the time the invention was made to form each of the two mounting flanges of the modified Davis mounting apparatus into two separate flanges, each having one fastener to maintain a total of four fasteners, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Regarding claim 12, the platform of the modified Davis mounting apparatus is rectangular in shape and would be of a length greater than a grill if a small enough grill were placed thereon.

Regarding claims 16 and 19, the modified Davis mounting apparatus includes a threaded screw (24) formed through the pivot collar (22) for preventing the support arm from rotating within the pivot mount assembly.

9. Claims 7 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 6 and 17 in paragraph #8 above in view of DeGuevara (US 5,518,159).

The modified Davis mounting apparatus as applied above includes the claimed features except for the retaining member being generally U-shaped with a pair of holes that align with a pair of holes through the support arm through which a pin passes to lock the support arm within the retaining member. The retaining member taught by Kincart has a single pin extending outwardly therefrom that passes through a hole in the support arm. DeGuevara, however, also discloses a pivotable mounting assembly attached at the rear of a vehicle and teaches that the support arm (18) is locked into a generally U-shaped receiving member (Figure 2), the receiving member having a pair of holes (35) that align with a pair of holes (35a) in the support arm through which a pin (37) passes to lock the support arm in the retaining member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the retaining member of the modified Davis mounting apparatus with another known and art-equivalent retaining member, such as that taught by DeGuevara, in order to securely retain the support arm against the vehicle bumper.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML
9/19/06


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